IN THE

Supreme Court of the United States

October Term, 1975

No. 75-5027

RUSSELL BRYAN, INDIVIDUALLY and
on Behalf of All Other Persons
Similarly Situated,

Petitioner,

vs.

ITASCA COUNTY, MINNESOTA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF MINNESOTA

BRIEF FOR THE RESPONDENT

WARREN SPANNAUS
Attorney General
C. H. LUTHER
Deputy Attorney General
PAUL R. KEMPAINEN
Special Assistant Attorney General
Department of Revenue
Centennial Office Building
St. Paul, Minnesota 55145
Tel.: (612) 296-3421
STEVEN G. THORNE
Special Assistant Attorney General
375 Centennial Office Building
St. Paul, Minnesota 55155
Tel.: (612) 296-3294
Attorneys for Respondent

224-7631 — Review Publishing Co., 287 E. 6th St., St. Paul, Minn. 55101 — 224-7631

TABLE OF CONTENTS

TABLE OF AUTHORITIES

IN THE

Supreme Court of the United States

October Term, 1975

No. 75-5027

RUSSELL BRYAN, INDIVIDUALLY and
on Behalf of All Other Persons
Similarly Situated,

Petitioner,

vs.

ITASCA COUNTY, MINNESOTA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF MINNESOTA

BRIEF FOR THE RESPONDENT

QUESTION PRESENTED

Does Public Law 280 confer upon the State of Minnesota and Itasca County, a political subdivision of the State of Minnesota acting pursuant to state law, the power to impose a personal property tax upon an enrolled Chippewa Indian with respect to his unrestricted personal property located inside the Leech Lake Indian Reservation?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The pertinent constitutional provisions and statutes involved in this case are adequately set forth in Petitioner's Brief at pages 2 through 5.

STATEMENT OF THE CASE

The facts of this case have been stipulated to and are not in dispute. Russell Bryan, an enrolled member of the Minnesota Chippewa Tribe, owns a mobile home which is located inside the Leech Lake Indian Reservation on land held in trust by the United States not for him but for his tribe (A.8). This mobile home is the private personal property of Russell Bryan. There is no contention that it is either restricted property or property held in trust by the United States.[1] Mobile homes are taxable as class 2A personal property in Minnesota pursuant to Minn. St. §§ 168.012, subd. 9; 272.01, subd. 1; and 273.13, subd. 3 (1971). In accordance with this statutory authority, Itasca County assessed a personal property tax liability totaling $147.95 against Bryan for the years 1971 and 1972 (A.9).

On September 11, 1972, Bryan commenced an action in Minnesota District Court against Itasca County and the State of

[1] P. L. 280 provides that "Nothing in this section shall authorize the . . . taxation of any real or personal property . . . belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States . . . ." 28 U.S.C. § 1360(b).

Minnesota seeking both declaratory and injunctive relief against the assessment and collection of such tax (A.1-3). On July 27, 1973, the State of Minnesota was dismissed from the action (A.11). On December 8, 1973, the District Court, after a full hearing and submission of briefs, held that the State of Minnesota and its political subdivisions have the power to tax Indians within the Leech Lake Reservation and consequently awarded judgment in favor of defendant Itasca County for the full amount of the tax (A.14-35).

On February 13, 1974, Bryan appealed from this judgment to the Minnesota Supreme Court. On March 28, 1975, the Minnesota Supreme Court affirmed the decision of the District Court (A.36).

On July 7, 1975, Bryan filed a petition for a writ of certiorari and motion to proceed *in forma pauperis* with the United States Supreme Court. On November 3, 1975, the Court granted the petition for a writ of certiorari and the motion to proceed *in forma pauperis* (A.74).

ARGUMENT

I

INTRODUCTION

It is important that the issue on this appeal be precisely defined so as to avoid any misunderstanding as to what the Court is being called upon to decide. The only issue here is whether the State of Minnesota has jurisdiction to impose a tax on the personal, unrestricted and non-trust property of an Indian where the Indian resides on the Leech Lake Indian Reservation and the property is located on said reservation.

It should be noted at the outset that there is no question in this case that the State of Minnesota is attempting to impose a tax upon tribal trust or restricted property. Throughout this litigation both parties have proceeded on the assumption that the mobile home involved is solely owned by Petitioner Bryan as his personal property. Therefore, Petitioner's implication in his Brief at page 48, that the mobile home is really a part of the trust land that is being taxed only because Minnesota has chosen to classify such property as personal, merely serves to confuse matters.

The decision of the Minnesota Supreme Court dealt with this point:

> Plaintiff has, for the first time, alleged in his brief that his mobile home was in fact annexed to tribal trust land, and thus is exempt under Public Law 280. However, in his complaint plaintiff does not allege that the mobile home is real property. In fact, paragraph 9 of his complaint states the defendant has no lawful authority "to assess or impose a tax upon his *personal property.*" (Italics supplied.) This entire lawsuit and appeal were

predicated on the assumption that this mobile home was in fact personal property. The trial court in its findings stated:

> "That there is no claim that the 1972 Skyline mobile home is any part of the real estate, but is personal property."

Therefore, we do not rule as to whether the mobile home can be taxed if in fact it is permanently affixed to the realty and cannot be removed by the owner, and thus is assessable in the manner of real estate taxes. This court has repeatedly refused to decide issues first raised on appeal. Rathbun v. W. T. Grant Co., —— Minn. ——, 219 N.W.2d 641 (1974); Tourville v. Tourville, 292 Minn. 489, 198 N.W.2d 138 (1972).

Consequently, Petitioner's indirect, albeit limited, attempt to raise the question now on page 48 of his Brief should be ignored by the Court.

It is settled law that the United States Supreme Court will not undertake to review for the first time issues which the court below did not decide. *Walters v. City of St. Louis,* 347 U.S. 231, 74 S.Ct. 505, 98 L.Ed. 660 (1954); *Duignan v. United States,* 274 U.S. 195, 47 S.Ct. 566, 71 L.Ed. 996 (1927).

Keeping the exact issue in this case in mind, Respondent submits that Public Law 280 gives the State of Minnesota jurisdiction to impose a tax on Petitioner Bryan's personal property.

II

PUBLIC LAW 280 GRANTS THE STATE OF MINNESOTA THE JURISDICTION TO IMPOSE A TAX UPON AN INDIVIDUAL INDIAN WITH RESPECT TO HIS PRIVATE, UNRESTRICTED AND NON-TRUST PERSONAL PROPERTY WHICH IS LOCATED ON THE LEECH LAKE INDIAN RESERVATION.

In 1953 Congress enacted Public Law 280, which has been characterized by this Court as a grant to several states, including Minnesota, of "full civil and criminal jurisdiction over Indian Reservations". *Organized Village of Kake v. Egan*, 369 U.S. 60, 74, 82 S.Ct. 562, 570, 7 L.Ed.2d 573 (1962). The question of whether this broad grant of power includes giving to the states jurisdiction to impose their taxes within such Indian reservations has never been resolved by this Court. See *McClanahan v. State Tax Commission of Arizona*, 411 U.S. 164, 178, 93 S.Ct. 1257, 1265, 36 L.Ed.2d 129 (1973), fn.18. However, the present appeal now squarely raises the issue.

The precise issue herein is whether section 2 of P.L.280 operates to make Minnesota's personal property tax applicable to non-trust and unrestricted personal property of an individual Indian which is located within the Leech Lake Indian Reservation. The question is therefore one of statutory construction which can be simply resolved by the application of well-settled rules governing the interpretation of statutes.

The first and most important rule, frequently stated by this Court, is that in matters of statutory construction this Court's duty is to give effect to the intent of Congress, and that in doing so its first reference is to the language of the statute itself. *Flora v. United States*, 357 U.S. 63, 78 S.Ct. 1079, 2 L.Ed.2d 1165 (1958); *A. Magnano Co. v. Hamilton*, 292 U.S.

40, 54 S.Ct. 599, 78 L.Ed. 1109 (1934). Furthermore, in looking at the words of a statute the basic rule is that they are to be given their ordinary and everyday meanings in the absence of persuasive reasons to the contrary. *Banks v. Chicago Grain Trimmers Assn.*, 390 U.S. 459, 88 S.Ct. 1140, 20 L.Ed.2d 30 (1968); *Malat v. Riddell*, 383 U.S. 569, 86 S.Ct. 1030, 16 L.Ed.2d 102 (1966).

Following these guidelines one can read P.L.280 and plainly see that it is a comprehensive grant of complete civil and criminal jurisdiction, with certain enumerated exceptions, to the named states. The words of the statute itself are the starting point from which Congressional intent is to be derived, and because in this case the words are so clear and unambiguous, they bear repeating. The section granting civil jurisdiction, codified as 28 U.S.C. §1360(a) (1970), is as follows:

> Each of the States or Territories listed in the following table *shall have jurisdiction over civil causes of action* between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over other civil causes of action, and *those civil laws of such State* or Territory *that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State* or Territory. (Emphasis added.)

The section granting criminal jurisdiction, codified as 18 U.S.C. § 1162(a) (1970), is as follows:

> Each of the States or Territories listed in the following table *shall have jurisdiction over offenses* committed by or against Indians in the areas of Indian country listed opposite the name of the State or Territory to the same

> extent that such State or Territory has jurisdiction over offenses committed elsewhere within the State or Territory, and *the criminal laws of such State* or Territory *shall have the same force and effect within such Indian country as they have elsewhere within the State* or Territory. (Emphasis added.)

The key language with which this case is concerned are the words in 28 U.S.C. § 1360(a) which say: ". . . those civil laws . . . that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State. . . ." Clearly the personal property tax laws of Minnesota are "civil laws" of the state "that are of general application to private persons or private property." Therefore, under the plain wording of the act, these civil laws are specifically made applicable to the personal property of Russell Bryan and have the same force and effect on the Leech Lake Reservation as they have elsewhere in Minnesota. Furthermore, a court proceeding to collect an Indian's personal property tax is clearly a "civil cause of action . . . to which Indians are parties, . . ." within the meaning of 28 U.S.C. § 1360(a) (1970).

Used in its ordinary and everyday sense the term "civil" denotes "rights and remedies sought by action or suit distinct from criminal". Webster's Third International Dictionary, Unabridged (1964). Congress, of course, often uses the phrase "civil action" simply to distinguish a proceeding from a criminal action. *See, McLean Trucking Co. v. United States*, 387 F.2d 657 (Ct.Cl. 1967); *Range Oil Supply Co. v. Chicago Rock Island and Pac. R.R.*, 140 F.Supp. 283 (D.Minn., 1956). That this was the meaning intended by Congress in P.L. 280 is made clear by the general structure of the law. There are only two

jurisdictional sections, one for civil and one for criminal jurisdiction. If Congress had conceived a third class of laws encompassing state tax laws, land use regulations, water laws and other general noncriminal laws and had considered that these laws were enforced by a judicial proceeding which is neither criminal nor civil, it is likely that it would have dealt with that class in a third section or have wholly excepted that class from the operation of both the civil and criminal sections. However, it took neither of these approaches. Instead it merely subjected the broad grants of jurisdiction to limited exceptions in favor of trust and restricted property.

Also, in particular reference to taxation, actions to collect a tax or to obtain refunds have often been held to be "civil actions". *See, State v. Ward*, 189 Okla. 532, 118 P.2d 216 (1941); *Johnston v. State*, 212 Ind. 375, 8 N.E.2d 590 (1937); *In re Atchison, Topeka & Sante Fe Ry. Co.'s Taxes in Eddy County for 1933*, 41 N.M. 9, 63 P.2d 345 (1936); *Boston & M.A.P.R.R. v. State*, 75 N.H. 513, 77 Atl. 996 (1910).

In this regard, the United States Supreme Court has specifically held in *Goudy v. Meath*, 203 U.S. 146, 27 S.Ct. 48, 51 L.Ed. 130 (1906), that the statutory subjection of an Indian to both the civil and criminal laws of a state, coupled with a grant of citizenship, subjects him to state taxation like any other citizen and resident of the state. In the language of the Court in 203 U.S. at 149-150:

> But further, by the act of February 8, 1887, plaintiff became and is a citizen of the United States. That act, in addition to the grant of citizenship, provided that "Indians to whom allotments have been made shall have the benefit of and be subject to the laws, both civil and crimi-

nal, of the state or territory in which they may reside." Re Heff, 197 U.S. 488, 49 L.ed. 848, 25 Sup. Ct. Rep. 506.

Among the laws to which the plaintiff as a citizen became subject were those in respect to taxation. His property, unless exempt, became subject to taxation in the same manner as property belonging to other citizens, . . . [I]t is disregarding the act of Congress to hold that the Indian having property is not subject to taxation when he is subject to all the laws, civil and criminal, of the state.

Respondent's position in this case cannot be more clearly and succinctly stated than it is by the Minnesota Supreme Court in the decision below.

The language of Public Law 280 lends support to defendant's assertion of power to levy the tax at issue. Specifically, 28 USCA § 1360, provides as follows:

"(a) Each of the States or Territories listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over other civil causes of action, *and those civil laws of such State or Territory that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:*

"State or Territory of	Indian country affected
Alaska	All Indian country within the Territory
California	All Indian country within the State

Minnesota	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation
Wisconsin	All Indian country within the State.

"(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

"(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section." (Italics supplied.)

Defendant logically argues that unless paragraph (a) is interpreted as a general grant of the power to tax, then

the exceptions contained in paragraph (b) are limitations on a nonexistent power.

* * *

A review of the legislative history of the act discloses that this provision was enacted in furtherance of the congressional policy of "termination" as expressed in H. R. Con. Res. 108, 83rd Cong. 1st Sess., 67 Stat. B 132, which states:

"* * * [I]t is the policy of Congress, as rapidly as possible, to make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, to end their status as wards of the United States, and to grant them all of the rights and prerogatives pertaining to American citizenship; and

"* * * the Indians within the Territorial limits of the United States should assume their full responsibilities as American citizens."

. . . [W]e accept the logic of defendant's position that it would make little sense for Congress to grant full civil and criminal powers to the state over all Indian territory and all Indian tribes in Minnesota (except the Red Lake Band) and specifically exempt certain property from taxation if the power to tax were not included within the original civil powers granted. See, Note, 39 Minn. L. Rev. 853.

The case most directly in point is a recent decision reached in the Federal District Court for the District of Nebraska in Omaha Tribe of Indians v. Peters, 382 F. Supp. 421 (D. Neb. 1974). That court held that Public Law 280 granted the State of Nebraska the power to levy

a state income tax upon the income derived by an Indian from employment on the reservation. The following excerpts from the court's opinion are relevant:

"* * * [I]t should be noted that P. L. 280 does not subject Indians to the jurisdiction of the state *by implication*. The statute is a clear and express grant of power subject only to the limitations stated in the ensuing sections of the statute. * * *

* * * * *

"* * * Given Congress' power to end the federal guardianship in total, it obviously has the power to establish an orderly program looking to the day when the guardianship can be ended. That is precisely the type of program evidenced by the statute in this case. *See* U. S. Code Cong. & Admin. News, p. 2409 et seq. [1953]. The statute also suggests that Congress felt that the termination of the federal guardianship over the affected tribes should result in their assimilation into the mainstream of life of the states wherein they are located. P. L. 280 is a step intended to prepare the Indian tribes for this assimilation by making all state laws applicable to Indians and in Indian country except as those laws may contravene the provisions of the statute itself.

* * * * *

"The language and structure of P. L. 280 strongly suggest that Congress intended to convey to the states the authority to enforce its revenue laws in Indian country. *The statute grants civil jurisdiction to the states over causes of actions involving Indians as parties and states that the civil laws of general application*

shall have the same force and effect as to Indians and within Indian country as they have throughout the state. This grant of power is then modified in later subsections to permit the federal government to retain its authority in certain areas such as over Indian trust property. One can only presume that the grant of jurisdiction in subsection [a] was to be considered plenary except as it was expressly limited by the statute. Any other interpretation of subsection [a] would require this Court to read into that section something which simply is not there. If Congress had intended to exempt Indians from the state's revenue laws, the Court feels certain that it would have expressly done so, as it exempted certain other Indian property from state jurisdiction in subsection [b] of P. L. 280, and as it expressly exempted reservation Indians from the provisions of the Buck Act. 4 U.S.C.A. § 109. By failing to quality [sic] subsection [a] Congress has expressly subjected Indians and Indian country to *all* state laws of general application including state revenue laws except where the application of those laws would violate one of the stated jurisdictional limitations in the statute.

"The above interpretation is strongly supported by the legislative history of P. L. 280. U. S. Code Cong. & Admin. News, pp. 2409, 2412 [1953] indicates that P. L. 280 was drafted because

'the Indians of several States have reached a stage of acculturation and development that makes desirable extension of States civil jurisdiction to the Indian country within their borders. Permitting the State courts to adjudicate civil controversies arising

on Indian reservations, and to extend to those reservations the substantive civil laws of the respective States insofar as those laws are of general application to private persons or private property, is deemed desirable.'

It was Congress' goal that this legislation be a step toward the day when the federal trusteeship over Indians could be finally ended through the assimilation of the tribes into the mainstream of life of the affected states. *Id.* at 2409; Williams v. Lee, *supra*, 358 U. S. at 220, 79 S. Ct. 269. There is no suggestion in either the legislative history of the Act, or in the language of the Act itself, that Congress intended that Indian tribes should derive the advantages of state law, while, at the same time, being shielded from its burdens." (Italics supplied in part.) 382 F. Supp. 424.[2]

Thus the above-quoted authorities demonstrate that Public Law 280 gives the State of Minnesota jurisdiction and authority to impose a personal property tax on Petitioner's mobile home.

---

[2] The Federal District Court's decision in *Omaha Tribe of Indians v. Peters*, 382 F.Supp. 421 (1974), was affirmed by the Eighth Circuit Court of Appeals, 516 F.2d 133 (1975), and on December 8, 1975, the United States Supreme Court denied certiorari.

III

THE GRANT OF TAXING AUTHORITY TO MINNESOTA BY PUBLIC LAW 280 IS CONSISTENT WITH OTHER CONGRESSIONAL ACTS CONCERNING INDIANS.

Petitioner's construction of P.L. 280 in light of other Congressional acts concerning Indians (Petitioner's Brief, pp. 49-55) is, of course, a legitimate exercise. However, the conclusions he draws are quite erroneous. The federal statutes cited by Petitioner do indeed grant certain privileges and continued Federal assistance to P.L. 280 reservations. However, as will be seen, this does not lessen the broad grant to the states of civil and criminal jurisdiction over such reservations.

Since House Concurrent Resolution 108 has never been repealed, it still stands as the official Congressional policy on Indian affairs. That document stands for a policy of assimilation of Indians into the rest of American society. It has also been shown that this policy was implemented essentially by two methods. One method was to terminate the Federal government's responsibility and supervision over certain tribes at once. The other method was the adoption of P.L. 280, which granted full civil and criminal jurisdiction to the named states over Indian country, while at the same time continuing, to a limited extent, those special rights and privileges of the Indians which Congress considered were still needed. Therefore, contrary to what Petitioner would have the Court believe, Respondent recognizes that certain limitations were built into the conferral of jurisdiction made by P.L. 280. At no time has either Itasca County, the State of Minnesota or the Minnesota Supreme Court contended that P.L. 280 is a termination act.

To the contrary, P.L. 280 is a careful and deliberate implemention of the policy of assimilation "as rapidly as possible" expressed in House Concurrent Resolution 108, whereby Congress chose to slowly accustom selected Indian reservations to the rights and responsibilities of the rest of American society while at the same time lessening the impact of this change in legal status by continuing a wide range of Federal protections and services. Thus Congress has, consistently with P.L. 280, continued to provide numerous services to reservation Indians in the areas of housing, economic development, employment assistance, education, medical care and foster child care. See, *Indians In Minnesota*, League of Women Voters of Minnesota (1971). Certainly, the existence of these programs does not establish *per se* that Congress intended to limit the otherwise broad grant of jurisdiction in P.L. 280.

The four Federal statutes cited by Petitioner are clearly not inconsistent with P.L. 280; especially since none of them specifically grants an immunity to Indians from the state taxation which P.L. 280 allows. The extension of state taxing powers by P.L. 280 does not terminate tribal self-government nor does it intrude on the right of the tribes themselves to levy taxes on their reservations pursuant to the Indian Reorganization Act, 25 U.S.C. §§ 475, 476, 477. Their tribal taxing power is still just as viable as the taxing power of any other local government, wealthy and poor alike, which must also share the available tax base with other units of government.

Petitioner's argument that state taxation of reservation Indians would be inconsistent with the Indian Financing Act, 88 Stat. 77, § 2, P.L. 93-262, is erroneous as well as irrelevant. If Congress had wanted to specially protect these funds from state taxation it could have done so expressly, but it did not do so. Furthermore, there is nothing in the record of this case to show that Russell Bryan or any other person similarly

situated receives any funds directly through the Indian Financing Act or that the funds used to purchase his mobile home were so acquired.

By the same token, Petitioner's arguments concerning P.L. 280's effect on the Indian Trading Statutes, 25 U.S.C. §§ 261 and 262 are also irrelevant to a determination of the present case. No questions concerning Federal Indian traders or their tax immunities have been raised on this appeal, and any discussion at this time concerning P.L. 280's effect on them is pure speculation.

Finally, P.L. 280 does not "sweep aside" any tax exemptions granted by the Buck Act, 4 U.S.C. § 104 *et seq.*, as Petitioner contends (Petitioner's Brief, pp. 34-35). The Buck Act, which comprehensively regulates state taxation of those persons living in Federal areas, merely states that "[n]othing in sections 105 and 106 of this title shall be deemed to authorize the levy or collection of any tax on or from any Indian *not otherwise taxed*". 4 U.S.C. § 109 (emphasis added). As this Court recognized in *McClanahan*, 411 U.S. at page 177, the Buck Act certainly cannot be read as "an affirmative grant of tax-exempt status to reservation Indians". Rather, the provisions of the Buck Act simply have no application to reservation Indians when, by virtue of some *other* governing Federal statute or treaty, they are subjected to state taxation. P.L. 280 is such a governing statute.

CONCLUSION

For all the foregoing reasons it is respectfully submitted that the judgment of the Supreme Court of Minnesota should be affirmed.

Respectfully submitted,

WARREN SPANNAUS
Attorney General
C. H. LUTHER
Deputy Attorney General
PAUL R. KEMPAINEN
Special Assistant
Attorney General
Department of Revenue
Centennial Office Building
St. Paul, Minnesota 55145
STEVEN G. THORNE
Special Assistant
Attorney General
375 Centennial Office
Building
St. Paul, Minnesota 55155
Tel.: (612) 296-3421
Attorneys for Respondent